

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #05	CCRB Case #: 202004031	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 05/25/2020 5:42 PM	Location of Incident: in front of § 87(2)(b)	18 Mo. SOL 5/4/2022	Precinct: 40		
Date/Time CV Reported Tue, 05/26/2020 10:09 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/08/2020 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Romaine Wilson	00000	949804	040 PCT
2. POF Catherine Dejesus	10084	966019	PSA 7
3. POM Fatmir Gjonbalaj	31476	952785	PSA 7
4. Officers			PSA 7
5. An officer			PSA 7
6. PO Joshua Espana	15092	966559	PSA 7
7. PO Michael Deluna	01491	956581	PSA 7
8. PO Henry Rojas	02379	965849	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Nashaly Malave	06803	964630	PSA 7
2. POF Lauren Amin	11367	961615	PSA 7
3. POM Gean Flores	24436	968414	REC TNG
4. PO Melvin Ventura	03009	957254	PSA 7
5. PO Dmitry Vaskovich	07012	961570	PSA 7
6. PO Joseph Martinez	10535	947221	PSA 7
7. PO Brandon Gonzalez	24845	950515	PSA 7
8. PO Pedro Silverio	00829	966850	PSA 7
9. PO Alan Tejeradelacruz	18811	968156	PSA 7
10. PO Mercedes Guevara	15233	967534	PSA 7
11. SGT Jason Wells	02839	935962	PSA 7
12. PO Veronica Beckley	01669	964917	040 PCT
13. PO Matthew Tully	07148	966891	040 PCT
14. PO Haronid Pena	10156	963686	040 PCT
15. PO Jonathan Kapczak	11552	968530	040 PCT
16. PO Tiago Gomes	15111	966599	040 PCT
17. PO Nickeisha Lopez	12536	968584	040 PCT
18. PO Angie Rodriguez	20746	959139	040 PCT
19. PO Kurt Niemeyer	18152	966737	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
20. PO Lia Perez	10760	966910	040 PCT
21. SGT David Robinson	05144	947408	040 PCT
22. PO Luke Speranza	11812	965879	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Fatmir Gjonbalaj	Abuse: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj unlawfully arrested § 87(2)(b)	
B . POM Fatmir Gjonbalaj	Abuse: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj threatened § 87(2)(b) with the use of force.	
C . POM Fatmir Gjonbalaj	Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used physical force against § 87(2)(b)	
D . POM Fatmir Gjonbalaj	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj spoke discourteously to § 87(2)(b)	
E . POM Fatmir Gjonbalaj	Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used a Taser against § 87(2)(b)	
F . POF Catherine Dejesus	Abuse: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus interfered with § 87(2)(b) use of a recording device.	
G . POF Catherine Dejesus	Force: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus used physical force against § 87(2)(b)	
H . POF Catherine Dejesus	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus spoke discourteously to § 87(2)(b)	
I . POF Catherine Dejesus	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus spoke discourteously to § 87(2)(b)	
J . POF Catherine Dejesus	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus made remarks to § 87(2)(b) based upon race.	
K . Officers	Force: At § 87(2)(b) in the Bronx, officers used physical force against § 87(2)(b)	
L . POM Fatmir Gjonbalaj	Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used physical force against § 87(2)(b)	
M . PO Joshua Espana	Force: At § 87(2)(b) in the Bronx, Police Officer Joshua Espana used physical force against § 87(2)(b)	
N . LT Romaine Wilson	Force: At § 87(2)(b) in the Bronx, Lieutenant Romaine Wilson used physical force against § 87(2)(b)	
O . Officers	Force: At § 87(2)(b) in the Bronx, officers used physical force against § 87(2)(b)	
P . An officer	Force: At § 87(2)(b) in the Bronx, an officer restricted § 87(2)(b) breathing.	
Q . POM Fatmir Gjonbalaj	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj spoke discourteously to § 87(2)(b)	
R . PO Michael Deluna	Abuse: At § 87(2)(b) in the Bronx, Police Officer Michael Deluna threatened to arrest an individual.	

Officer(s)	Allegation	Investigator Recommendation
S . An officer	Force: At § 87(2)(b) in the Bronx, an officer used physical force against § 87(2)(b)	
T . PO Henry Rojas	Discourtesy: At the PSA7 stationhouse, Police Officer Henry Rojas spoke discourteously to § 87(2)(b)	
U . An officer	Abuse: At the PSA7 stationhouse, an officer searched § 87(2)(b) recording device.	
V . An officer	Abuse: At the PSA7 stationhouse, an officer deleted information on § 87(2)(b) electronic device.	

## Case Summary

On May 26, 2020, § 87(2)(b) filed the following complaint by phone with IAB on behalf of her husband § 87(2)(b) and her close family friend § 87(2)(b) generating original log number § 87(2)(b). The CCRB received the complaint on June 8, 2020.

On May 25, 2020, at approximately 5:42 p.m., § 87(2)(b) and § 87(2)(b) father, § 87(2)(b) were outside § 87(2)(b) in the Bronx with several other family members and friends getting ready for a barbecue. Police Officers Fatmir Gjonbalaj, Lauren Amin, and Gean Flores of PSA 7 approached the group after allegedly seeing § 87(2)(b) with a lit marijuana cigarette. PO Gjonbalaj and PO Amin briefly argued with the group, admonished them not to smoke marijuana around children, and then moved to reenter their vehicle and leave the scene. However, shortly thereafter, PO Gjonbalaj demanded § 87(2)(b) ID and then attempted to place him in custody when he claimed not to have an ID. The incident ultimately resulted in § 87(2)(b) arrest (BR 01) (**Allegation A: Abuse of Authority**, § 87(2)(g) PO Gjonbalaj threatened to use a Taser against § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g) PO Gjonbalaj punched § 87(2)(b) in the torso and head (**Allegation C: Force**, § 87(2)(g) PO Gjonbalaj told § 87(2)(b) “Give me your fucking hands” (**Allegation D: Discourtesy**, § 87(2)(g) PO Gjonbalaj deployed his Taser in cartridge mode against § 87(2)(b) (**Allegation E: Force**, § 87(2)(g) Additional officers arriving on scene, including Sergeant Jason Wells and Police Officers Catherine Dejesus, Joshua Espana, Brandon Gonzalez, Melvin Ventura, and Michael Deluna of PSA 7. Lieutenant Romaine Wilson of the 40<sup>th</sup> Precinct also eventually arrived on scene.

As officers cuffed § 87(2)(b) PO Dejesus approached § 87(2)(b) who was filming the incident, allegedly told him not to record, began attempting to arrest him, and punched him multiple times (**Allegation F: Abuse of Authority**, § 87(2)(g) **Allegation G: Force**, § 87(2)(g) During the ensuing struggle with § 87(2)(b) PO Dejesus called him a “motherfucker” (**Allegation H: Discourtesy**, § 87(2)(g) PO Dejesus also said to § 87(2)(b) “Fuck outta here, nigga” (**Allegation I: Discourtesy**, § 87(2)(g) **Allegation J: Offensive Language**, § 87(2)(g) Multiple officers forcibly brought § 87(2)(b) to the ground (**Allegation K: Force**, § 87(2)(g) Once § 87(2)(b) was face-down on the ground, PO Gjonbalaj punched him in the torso (**Allegation L: Force**, § 87(2)(g) PO Espana punched § 87(2)(b) twice in the back of the head (**Allegation M: Force**, § 87(2)(g) Multiple additional officers, including Lt. Wilson, allegedly took turns beating § 87(2)(b) while he was on the ground (**Allegations N-O: Force**, § 87(2)(g) An officer allegedly restricted § 87(2)(b) breathing by kneeling on his back (**Allegation P: Force**, § 87(2)(g) PO Gjonbalaj told § 87(2)(b) to “get the fuck up” (**Allegation Q: Discourtesy**, § 87(2)(g) § 87(2)(b) was arrested for harassment, disorderly conduct, obstructing governmental administration, and resisting arrest (BR 02).

While directing remaining members of the crowd away from the area, PO Deluna threatened to arrest an unidentified individual (**Allegation R: Abuse of Authority**, § 87(2)(g) An officer allegedly used force against § 87(2)(b) in the doorway of his building (**Allegation S: Force**, § 87(2)(g)

Once at the PSA 7 stationhouse, Police Officer Henry Rojas of PSA 7 told § 87(2)(b) to “shut the fuck up” (**Allegation T: Discourtesy**, § 87(2)(g) An officer allegedly searched § 87(2)(b) phone and deleted a video which captured the incident (**Allegations U-V: Abuse of Authority**, § 87(2)(g)

The investigation obtained two cellphone videos from unidentified bystanders (BR 04-05, summarized in BR 06). § 87(2)(b) provided these videos to IAB when she filed the complaint, and IAB forwarded them to the CCRB. The investigation also obtained multiple BWC videos (BR 07-27, summarized in BR 28-34). All references to video evidence below refer to the timestamp in the video player and not to any on-screen timestamp.

PO Amin has since changed her surname to Pando, but she is referred to as PO Amin in this report as it was her name at the time of the incident. Lt. Wilson has since been reassigned to the Drug Enforcement Task Force. PO Flores is no longer a member of the NYPD.

On July 24, 2020, this case was submitted to be closed pending litigation at the request of the civilians involved. The complaint was not reopened until August 23, 2021. On that date, the case was reassigned from Inv. Faria Tasnim to the undersigned, as Inv. Tasnim had left the agency. The investigation was then further delayed by extensive attempts to obtain testimony from § 87(2)(b) who scheduled and failed to respond for three interview appointments, and then by additional attempts to locate and interview additional civilian victims and witnesses.

### **Findings and Recommendations**

#### **Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj unlawfully arrested § 87(2)(b)**

It is undisputed that PO Gjonbalaj decided to issue § 87(2)(b) a summons for disorderly conduct, and then initiated an arrest when § 87(2)(b) declared that he did not have ID. It is further undisputed that § 87(2)(b) was eventually arrested (BR 01) for resisting arrest, obstructing governmental administration, and disorderly conduct (subsections 01 & 06). PO Flores was the assigned arresting officer. PO Flores left the NYPD before he could be interviewed for this case.

The assorted BWC footage provided a reasonably clear record of the portion of the incident leading up to PO Gjonbalaj's decision to take § 87(2)(b) into custody. PO Amin's first BWC video (BR 41, at approximately 00:30) shows the officers arriving on scene and having their initial conversation with the civilians. There were a number of adults and young children seated on benches near a building entrance. The conversation lasted just over one minute, and at no point did § 87(2)(b) appear even to speak to the officers. § 87(2)(b) briefly walked over to sniff the air and declared that he did not smell any marijuana. As the officers began reentering their vehicle, § 87(2)(b) also told them they should be catching criminals. PO Gjonbalaj sat in the driver's seat with the door open, while PO Amin stood near the hood. At this point, various individuals seated on the benches began complaining about the officers' behavior and making remarks to the effect that the officers were always harassing them. By this point, § 87(2)(b) was still sitting on a bench, and he can be heard saying, "I can say what the fuck I want." PO Amin repeatedly called out, "You're running your mouth now," and said, "You wasn't running it when we was over there. You wasn't saying nothing when we was over there though." PO Amin then walked back toward the group, reiterated that she had said what she needed to say about smoking near children, and indicated that the interaction was over. Members of the group continued making remarks, such as about how they pay taxes, and PO Amin retorted that her bills were paid. By 03:10, PO Amin returned to the passenger side of the vehicle, while PO Gjonbalaj remained seated in the driver's seat with the door open, such that he was closest to the group of civilians. At least one civilian can be heard yelling, though which civilian and what they are saying is not decipherable. At 03:26, PO Gjonbalaj lowered the passenger window and asked PO Amin, "Yo, what are we doing?" PO Amin leaned inside the vehicle and asked him, "What happened, G?" At this point, § 87(2)(b) can be seen through the rear driver-side window. He appears to be standing around ten feet away from the RMP and engaged in some level of conversation with PO Gjonbalaj. A voice can be heard saying, "They can't tell me shit." PO Amin then deactivated her BWC.

PO Amin reactivated her BWC seconds later (BR 42), capturing PO Gjonbalaj apparently speaking to § 87(2)(b) who remains standing about ten feet away near the benches. There is no audio in the clip. The two go back and forth briefly before PO Gjonbalaj exits the vehicle. PO Gjonbalaj's BWC video (BR 08) captured this same time period, and the audio begins just as PO Gjonbalaj reaches § 87(2)(b) at the benches. PO Gjonbalaj said, "All I'm saying is y'all can't smoke out here," while § 87(2)(b) began holding up his phone and yelling, "Stop stepping to me! Do not step to me! I don't want to talk to you." PO Gjonbalaj said, "Excuse me, I'm talking to you. You want to curse, you want to cause a scene? Do me a favor, you



got ID?" § 87(2)(b) sat down on the bench while saying he did not have ID, and PO Gjonbalaj ordered him to stand up and turn around.

Cellphone footage from a bystander provided an alternate angle of the moment when PO Gjonbalaj approached § 87(2)(b) and ordered him to submit to an arrest (BR 05). The cellphone footage and the BWC footage show that while there were a number of people scattered around the benches, there was no large crowd drawn to the scene or surrounding the officers' vehicle by the time PO Gjonbalaj ordered § 87(2)(b) to stand up and turn around.

The investigation could not obtain a statement from § 87(2)(b) or § 87(2)(b) interviewed over 14 months after the incident, remembered there being an argument between § 87(2)(b) and the officers, but he did not remember the details of the conversation (BR 36). § 87(2)(b) (BR 37-38) was not interviewed until more than 18 months after the incident, and his recollection of this portion of the incident was not at all consistent with the video footage and did not aid the investigation.

PO Gjonbalaj was not interviewed until more than 20 months after the incident (BR 40). He recounted that § 87(2)(b) began "acting irate" when the officers initially approached § 87(2)(b) to give her a warning about smoking marijuana. § 87(2)(b) yelled, used profanity, and told the officers to leave. PO Gjonbalaj could not recall any specific statements § 87(2)(b) made. PO Gjonbalaj asserted that § 87(2)(b) was "gathering a scene around" the officers by causing people to exit the building, who then also yelled and cursed at the officers. PO Gjonbalaj did not remember how many individuals came out of the building and could not recall exactly what they were saying. PO Gjonbalaj recalled telling § 87(2)(b) to leave at some point, and § 87(2)(b) cursed and said he did not have to do so. PO Gjonbalaj also claimed that the officers tried to leave but could not do so because members of the crowd had surrounded the officers' vehicle, and he recounted that § 87(2)(b) kept approaching the driver's door of the vehicle such that he was "literally right on the car." PO Gjonbalaj could not recall if § 87(2)(b) ever challenged him to a fight or made any threatening statements toward officers. PO Gjonbalaj decided to issue § 87(2)(b) a summons for disorderly conduct, and he confirmed that disorderly conduct was the sole violation he believed § 87(2)(b) had committed by that point in the incident. He then had to take § 87(2)(b) into custody when he refused to provide ID, as he could not issue the summons without verifying § 87(2)(b) identity.

After viewing the initial portion of his BWC footage showing him exiting the vehicle and reapproaching § 87(2)(b) PO Gjonbalaj said that he did so because § 87(2)(b) "kept cursing" and "kept...saying whatever he was saying." PO Gjonbalaj still could not recall what § 87(2)(b) said. When it was pointed out that the footage shows § 87(2)(b) standing some distance away from the vehicle, PO Gjonbalaj testified that § 87(2)(b) "got closer at one point." As noted above, PO Flores prepared the arrest report for § 87(2)(b) (BR 01). PO Gjonbalaj could not recall if he ever discussed the incident with PO Flores, and he did not know why PO Flores added OGA as a charge on the report.

PO Amin was not interviewed until more than 20 months after the incident (BR 39). She testified that, during the initial interaction with § 87(2)(b) was "interfering" by saying things like, "Get the fuck out of here," and, "You're always coming here." § 87(2)(b) remarks caused § 87(2)(b) to "get loud" and caused a crowd to gather. PO Amin did not know from where the crowd came and could not say if they were just the same people who had been sitting on the benches, but she recalled that they also asked the officers why they were bothering them. PO Amin initially recounted that, as she went to reenter the vehicle, § 87(2)(b) started "mouthing off," approached the vehicle, and said something to PO Gjonbalaj about wanting to fight him, punch him, or beat him up. However, PO Amin later acknowledged that she could not recall if she actually heard § 87(2)(b) make such a remark, or if it was recounted to her later by other officers. § 87(2)(b) had not made any physical motions to indicate that he wanted to fight PO Gjonbalaj. PO Amin did not know why PO Gjonbalaj asked for § 87(2)(b) ID, but she confirmed that she believed § 87(2)(b) was committing disorderly conduct by "mouthing off", causing a scene, and "interfering" with the officers when they tried to talk to § 87(2)(b).

The video footage contradicted many of PO Gjonbalaj and PO Amin's claims about § 87(2)(b) behavior. The footage shows that § 87(2)(b) did not become irate, yell, or appear to say anything to the officers during their initial interaction with § 87(2)(b). The claim that his behavior caused a crowd to gather or prompted other civilians to yell at the officers is also not supported by the footage. It is clear that many

of the civilians gathered on the benches spontaneously began complaining about the officers' behavior irrespective of anything § 87(2)(b) said or did, and there is nothing in the footage to support the claim that his behavior prompted a crowd to exit from the nearby building. The footage also does not support PO Gjonbalaj's claim that a crowd surrounded the police vehicle. At most, the footage shows that § 87(2)(b) eventually yelled, directed profanity toward the officers, and stood up from the bench. § 87(2)(b) may have taken a step or two toward the vehicle, but the footage is not consistent with PO Gjonbalaj's claim that he ever approached to the point that he was "literally right on the car." Although it is possible that § 87(2)(b) came closer to the vehicle during the very brief period for which he is not visible in the BWC footage, he had clearly retreated back to the bench by the time PO Gjonbalaj decided to exit the vehicle and approach him. There is also no indication in the footage that PO Gjonbalaj issued § 87(2)(b) with an order to disperse. The footage also does not capture § 87(2)(b) voicing a physical threat toward PO Gjonbalaj, and PO Gjonbalaj himself did not recall § 87(2)(b) making such a threat.

A person is guilty of disorderly conduct when, with an intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she: (1) engages in fighting or in violent, tumultuous, or threatening behavior; (2) makes unreasonable noise; (3) uses abusive or obscene language, or makes an obscene gesture; (4) without lawful authority, disturbs any lawful assembly; (5) obstructs vehicular or pedestrian traffic; (6) congregates with other persons in a public place and refuses to comply with an order to disperse; or (7) creates a hazardous or physically offensive condition. New York Penal Law §240.20 (BR 69).

"Critical to a charge of disorderly conduct is a finding that defendant's disruptive statements and behavior were of a public rather than an individual dimension." "The risk of public disorder does not have to be realized but the circumstances must be such that the defendant's intent to create such a threat (or reckless disregard thereof) can be readily inferred." In determining whether such an intent can be inferred, courts use "a contextual analysis that turns on the consideration of many factors, including 'the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances.'" *People v. Baker*, 20 N.Y.3d 354 (2013) (BR 44). In *Baker*, the Court of Appeals found that "isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the 'public harm' mens rea necessary to support a disorderly conduct charge."

§ 87(2)(g) § 87(2)(b) there is no evidence suggesting that § 87(2)(b) actions amounted to anything other than an individual argument between himself and the officers. There was a group of people directing antagonistic remarks at the officers, but § 87(2)(b) behavior in particular neither caused them to gather nor prompted them to make such remarks. Merely arguing with an officer or directing profanities at him does not constitute disorderly conduct, yet that behavior appears to be the sole reason PO Gjonbalaj decided to initiate the arrest. § 87(2)(b) was also eventually charged with OGA and resisting arrest, but those charges stemmed from actions he took after PO Gjonbalaj decided to arrest him, and PO Gjonbalaj testified that disorderly conduct was the sole offense § 87(2)(b) committed by that point in the incident. § 87(2)(g)

**Allegation (B) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj threatened § 87(2)(b) with the use of force.**

**Allegation (C) Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used physical force against § 87(2)(b)**

**Allegation (D) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj spoke discourteously to § 87(2)(b)**

**Allegation (E) Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used a non-lethal restraining device on § 87(2)(b)**

In sum, the footage shows that § 87(2)(b) responded to PO Gjonbalaj's order that he stand up and turn around by removing his jacket, putting his hands up, declaring that he had nothing on him, refusing to stand up, and yelling at the officers to call a supervisor and activate their BWCs. He then said, "Do what you want, I'm not going nowhere." PO Gjonbalaj attempted to grab § 87(2)(b) right hand, and § 87(2)(b) reacted by threading his arms through the bench slats and continuing to declare that he was not going anywhere (BR 42, 00:13) (BR 08, 00:39) (BR 05, 00:00). § 87(2)(b) refused numerous orders to stand up. PO Gjonbalaj and PO Amin briefly attempted to remove § 87(2)(b) hands from the bench, before PO Gjonbalaj drew his Taser and said, "You're gonna get Tased." § 87(2)(b) repeatedly told PO Gjonbalaj to use the Taser against him and called him a "racist motherfucker." § 87(2)(b) refused numerous additional orders to stand up.

Around this time, PO Ventura arrived on scene and approached § 87(2)(b) (BR 09, 00:22). PO Ventura held § 87(2)(b) right hand, tapped his chest, and calmly told him, "Listen to me. There's a reason why they stopped you. Do me a favor..." § 87(2)(b) responded, "Can I walk with you? I feel safer walking with you." § 87(2)(b) then removed his right arm from the bench as PO Ventura held it, at which point PO Gjonbalaj suddenly grabbed § 87(2)(b) right arm away from PO Ventura and tried to pull § 87(2)(b) off the bench entirely, as multiple voices could be heard saying, "Hold on." The civilian bystander footage provides the clearest view of this portion of the incident (BR 05, 00:50). § 87(2)(b) resisted PO Gjonbalaj's attempt to pull him off the bench by keeping his left arm entwined in it, and PO Gjonbalaj responded by grabbing him in a headlock with his left arm and punching him in the stomach and face with his right fist. PO Gjonbalaj also yelled, "Give me your fucking hands!" § 87(2)(b) responded by wrapping his unwound right arm around his face to protect it and continued holding onto the bench. § 87(2)(b) did not do anything else with his body in response to PO Gjonbalaj punching him.

PO Gjonbalaj briefly disengaged from § 87(2)(b) to retrieve his fallen BWC, leaving PO Dejesus and PO Ventura with him (BR 08, 02:04). At 02:32, PO Gjonbalaj reapproached from behind PO Ventura, who was still standing directly in front of § 87(2)(b) (see also PO Dejesus' BWC footage at BR 10, 00:20). PO Ventura held § 87(2)(b) right arm with his right arm, and had his left arm wrapped around § 87(2)(b) in a semi-hug. It is briefly apparent that § 87(2)(b) had by now also removed his left hand from the bench, and he held his left hand up with the palm open and facing outward as he spoke to PO Ventura. PO Gjonbalaj quickly told PO Ventura to "watch out" before firing his Taser at § 87(2)(b) from very close range, such that PO Ventura had to suddenly jump away to his left after he heard the Taser discharge. § 87(2)(b) then slumped over on the bench. The best view of this moment is in Sub-clip #1 (BR 71, slowed to one-third speed).

At no point in the footage does § 87(2)(b) use any physical force toward any officer, nor does he ever threaten to do so. At most, he tenses his arms to resist efforts to extricate him from the bench. The collective footage also shows that the civilians in the vicinity became extremely agitated and angry once officers began attempting to arrest § 87(2)(b) and especially after PO Gjonbalaj punched him. Many of them stood quite close to the officers attempting to remove § 87(2)(b) from the bench and filmed with cellphones, and many screamed at the officers. At the same time, numerous additional officers began arriving on scene.

PO Gjonbalaj testified that he attempted to remove § 87(2)(b) arms from the bench and threatened to Taser him to gain compliance. He then punched § 87(2)(b) because verbal commands and threats had not worked. PO Gjonbalaj recounted that § 87(2)(b) arms were still wrapped around the bench when PO Gjonbalaj punched him. PO Gjonbalaj could not recall how many times he punched § 87(2)(b) or where on his body he made contact. PO Gjonbalaj also noted that civilians were gathering behind him, and he felt the officers risked having to fight more people if they had to wait any longer to apprehend § 87(2)(b). PO Gjonbalaj testified that § 87(2)(b) never showed any sign that he was going to cooperate, and he denied that § 87(2)(b) ever extricated either of his hands from the bench. Ultimately, PO Gjonbalaj deployed his Taser once on § 87(2)(b) which was effective in getting him off the bench so they could cuff him. PO



Gjonbalaj used a Taser because he “went up the chain” of force escalation after previous methods were unsuccessful.

Upon reviewing the BWC footage, PO Gjonbalaj confirmed that he saw § 87(2)(b) remove his right hand from the bench when PO Ventura approached in the footage, but he testified that he did not recall this from the incident. PO Gjonbalaj added that § 87(2)(b) removal of his right hand from the bench did not indicate to him that § 87(2)(b) was willing to cooperate, because he still had his left arm more tightly wrapped around the bench. After reviewing the portion of PO Dejesus’ BWC footage showing that § 87(2)(b) had also removed his left arm from the bench by the time PO Gjonbalaj shot him with the Taser, PO Gjonbalaj confirmed that he saw it in the footage. However, he asserted that § 87(2)(b) was still resisting by not giving officers his hands, though he did not know what § 87(2)(b) was doing with his hands.

Patrol Guide Procedure 221-01 (BR 45) states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, officers should consider factors which include:

- The nature and severity of the crime/circumstances;
- Actions taken by the subject;
- Duration of the action;
- Immediacy of the perceived threat or harm to the subject, officers, and/or bystanders;
- Whether the subject is actively resisting custody;
- Whether the subject is attempting to evade arrest by flight;
- Number of subjects in comparison to the number of officers;
- Size, age, and condition of the subject in comparison to the officers;
- Subject’s violent history, if known;
- Presence of hostile crowd or agitators;
- Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.”

The Procedure also states: “When appropriate and consistent with personal safety, **members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force**” (emphasis added).

Patrol Guide Procedure 200-02 requires that officers “maintain a higher standard of integrity than is generally expected of others” and that officers are to “render [their] services with courtesy and civility” (BR 46). An officer may use profanity in the heat of a highly dangerous situation or in order to punctuate an order given under extremely stressful circumstances to obtain compliance. *PD v. Milne*, OATH Index No. 222/00 (March 14, 2000) (BR 70).

Patrol Guide Procedure 221-08 dictates that a Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others (BR 48). Active resistance includes “physically evasive movements to defeat an officer’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Active aggression is the “threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.”

At the point that PO Gjonbalaj first threatened to use his Taser, § 87(2)(b) had actively resisted by threading his arms through the bench and declaring that he was refusing to be detained. § 87(2)(g)

The video footage makes clear that § 87(2)(b) refused to comply with PO Gjonbalaj’s orders and resisted officers’ attempts to remove his arms from the bench slats. § 87(2)(g)

However, the video footage also shows that PO Ventura’s attempts at de-escalation were effective. § 87(2)(g)

§ 87(2)(b) had voluntarily removed his right arm from the bench and stated his desire to go with PO Ventura. PO Gjonbalaj then stymied PO Ventura's efforts and unnecessarily escalated the interaction by grabbing § 87(2)(b) arm away from PO Ventura. PO Gjonbalaj's decision to then put § 87(2)(b) in a headlock and punch him in the face § 87(2)(g) § 87(2)(b) had not directed any physical force toward officers and had not made any statements indicating he would do so. Furthermore, while there was a crowd of agitated bystanders, there were also numerous additional officers arriving on scene, and they could have helped to extricate § 87(2)(b) from the bench without resorting to impact strikes to the face. § 87(2)(g)

§ 87(2)(g) In general, the Patrol Guide would permit the use of a Taser against someone who is actively resisting. However, the video footage shows that PO Ventura had successfully convinced § 87(2)(b) to remove both of his arms from the bench and was holding him in a hug while speaking to him. PO Gjonbalaj again stymied PO Ventura's attempts at de-escalation by suddenly firing his Taser, and he did so in such a rushed and reckless manner that PO Ventura had not yet fully moved out of the field of fire. § 87(2)(g)

Regardless of the propriety of the physical force PO Gjonbalaj was using at the time, it is evident that the chaotic nature of the situation and § 87(2)(b) initial refusal to comply § 87(2)(g)

**Allegation (F) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus interfered with § 87(2)(b) use of a recording device.**

**Allegation (G) Force: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus used physical force against § 87(2)(b)**

**Allegation (H) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that he was standing around 15 feet away from § 87(2)(b) under some nearby scaffolding when PO Dejesus told him to turn his phone off and to back up. § 87(2)(b) responded that he had the right to record. PO Dejesus continued telling him to stop filming and he ignored her. PO Dejesus then punched § 87(2)(b) twice in the face around his left eye, prompting him to drop his phone. § 87(2)(b) put his hands up in front of his chest with his fingers open and his palms facing outward before turning and running away. § 87(2)(b) later asked to be transported to a hospital for chest pain, and he testified that he also had a bloody nose, scratches on his nose, knees, back, and elbows, and bruising around his left eye. § 87(2)(b) was unable to say which particular uses of force caused which injuries. He testified that hospital staff told him he sustained fractures near his eye and nose. However, he did not cooperate with signing medical release forms and consequently the investigation was unable to obtain any of his medical records. § 87(2)(b) arrest photo shows scattered red marks on his face (BR 72).

This portion of the incident was best captured in PO Amin's third BWC video (BR 49, 00:42-01:10), PO Dejesus' BWC footage (BR 10, 00:47-01:10), and one of the bystander cellphone clips (BR 04, 00:00-00:19). § 87(2)(b) is dressed in a black T-shirt with "BRONX" printed in white, dark shorts, and dark sunglasses. He holds up his cellphone with his right hand while pointing with his left hand and yelling at officers. He points in the direction of PO Dejesus and says something ending in "...punched in the face," followed by a statement resembling, "You're gonna get punched in the face." There is a good deal of yelling and commotion in the footage, so it is difficult to discern § 87(2)(b) exact words. PO Dejesus's footage (BR 10, 00:56) shows that she responded to § 87(2)(b) yelling by pointing at him and saying, "What happened? You want to punch me? Go ahead!" PO Dejesus then approached § 87(2)(b) who remained standing in the same position with his phone held up in his right hand. PO Dejesus touched § 87(2)(b) chest while he said, "...touch me. Harassment!" At the same time, an

unidentified civilian attempted to grab § 87(2)(b) phone, and § 87(2)(b) stepped backward with his arms down at his sides. § 87(2)(b) also called PO Dejesus a “faggot.” PO Dejesus yelled, “What?! What?! Motherfucker! What?! What?!” At the same time, he inadvertently walked backward into a scaffolding pole, she grabbed the back of his head and pulled it down, and then she threw multiple punches at his head. He continued backing away and another officer grabbed him. At no point in the footage does PO Dejesus ever tell § 87(2)(b) to stop filming the incident.

PO Dejesus initially recounted that § 87(2)(b) said that he was going to punch and hit her. She later recounted him calling her a “bitch” and saying he was going to “fuck [her] up.” After reviewing her BWC footage, she testified that he said to her, “I’m gonna punch you in the fucking face.” She initially could not explain why she replied, “Go ahead,” to § 87(2)(b) threat, and ultimately said she made the comment in the heat of the moment. She approached § 87(2)(b) with the intent to arrest him. She could not recall if she ever told him he was under arrest or instructed him to put his hands behind his back. After reviewing her BWC footage, she thought that she likely did not indicate to § 87(2)(b) that she was arresting him due to the heat of the moment with so many things going on. As she tried to grab his arms, § 87(2)(b) raised his right arm above his head, which PO Dejesus interpreted to mean that he was going to hit her based on his previous verbal threat. As a result, PO Dejesus responded by punching § 87(2)(b) two to three times about his face. She used hand strikes because she was the only officer apprehending § 87(2)(b) and § 87(2)(b) was much taller than her. She believed that hand strikes were tactically the best method to gain compliance. Upon reviewing frame-by-frame BWC footage, PO Dejesus struggled to point out the moment that § 87(2)(b) raised his right arm above his head as if he was going to strike her. She ultimately specified a particular moment (see screenshot at BR 51), but this was clearly when § 87(2)(b) was holding his phone up to record, before PO Dejesus first touched him.

PO Dejesus did not recall using the word “motherfucker,” and she testified that she could not hear it in the BWC footage because the audio was too muffled.

PO Amin testified to hearing § 87(2)(b) say to PO Dejesus, in sum and substance, “I’m gonna knock you out, bitch.” PO Amin could not recall how the ensuing scuffle began. She only remembered § 87(2)(b) pulling away from PO Dejesus and running. PO Gjonbalaj also testified to § 87(2)(b) threatening to assault PO Dejesus, though he could not recall the language he used. He also remembered § 87(2)(b) raising his arm as if to strike someone, but he did not remember at what point in the incident this took place. Between § 87(2)(b) raising his arm and the threat he made, PO Gjonbalaj believed that § 87(2)(b) had already struck PO Dejesus. However, he never saw § 87(2)(b) actually strike any officer.

§ 87(2)(g)  
The footage also tends to support the claim that § 87(2)(b) made a threatening remark to PO Dejesus. The footage does not support, however, PO Dejesus’ account of § 87(2)(b) raising his arm or otherwise making a motion consistent with an intent to strike her. At most, § 87(2)(b) is shown attempting to back away from her. The footage also confirms that PO Dejesus never told § 87(2)(b) he was under arrest and did not issue any instructions or orders to him before she punched him.

Patrol Guide Procedure 221-01 (BR 45) states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive.

Patrol Guide Procedure 200-02 states that officers must “maintain a higher standard of integrity than is generally expected of others,” and that officers are to “render [their] services with courtesy and civility” (BR 46). DCT Case 2017-17005 states that when officers use profanity under the justification of a stressful or chaotic situation, the interaction must be “so chaotic that the duty of courteous and professional behavior should be overridden by the need to maintain order” (BR 47).

§ 87(2)(g)  
The subsequent physical struggle with him did interfere with his ability to film the incident,



but that was merely incidental to PO Dejesus' attempt to arrest him. § 87(2)(g)

§ 87(2)(g)

Regardless of any threatening remark he made, § 87(2)(b) made no movement consistent with intending to use force against PO Dejesus when she approached him. Moreover, as PO Dejesus began punching him without ever issuing him any orders or otherwise informing him that he was under arrest, § 87(2)(g)

§ 87(2)(g)

**Allegation (I) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus spoke discourteously to § 87(2)(b)**

**Allegation (J) Offensive Language: At § 87(2)(b) in the Bronx, Police Officer Catherine Dejesus made remarks to § 87(2)(b) based upon race.**

The footage shows that § 87(2)(b) attempted to flee after PO Dejesus punched him and another officer tried to grab him. The chase ended a few feet away, with § 87(2)(b) going to the ground beside a fence. PO Dejesus' BWC footage (BR 10, 01:09) captures her yelling, "Fuck outta here! Fuck outta here, nigga!" PO Dejesus' use of the word "nigga" is more clearly captured in the audio of Police Officer Dmitry Vaskovich's first BWC clip (BR 73, 00:25).

PO Dejesus did not recall calling § 87(2)(b) a "nigga." She acknowledged that she might have said, "Fuck outta here." When asked if there was any reason why she would have used profanity at that point in the incident, PO Dejesus testified that she was born and raised in the Bronx where the use of profanity was normal. She acknowledged that the use of profanity by a police officer is unprofessional, but she also noted that her use of profanity was a heat-of-the-moment response to the hostility exhibited by § 87(2)(b). PO Dejesus confirmed that she could hear herself say, "Fuck outta here," in her BWC footage, but she could not hear herself say "nigga" as the audio was too muffled.

Patrol Guide Procedure 200-02 states that officers are to, "Maintain a higher standard of integrity than is generally expected of others" and that officers are to "render [their] services with courtesy and civility" (BR 46). DCT Case 2017-17005 states that when officers use profanity under the justification of a stressful or chaotic situation, the interaction must be "so chaotic that the duty of courteous and professional behavior should be overridden by the need to maintain order" (BR 47). Patrol Guide Procedure 203-10 prohibits officers from using discourteous or disrespectful remarks regarding another person's race (BR 55).

§ 87(2)(g) The phrase, "Fuck outta here," was not an order to § 87(2)(b) and served no law enforcement purpose. § 87(2)(g)

**Allegation (K) Force: At § 87(2)(b) in the Bronx, officers used physical force against § 87(2)(b)**

**Allegation (L) Force: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj used physical force against § 87(2)(b)**

**Allegation (M) Force: At § 87(2)(b) in the Bronx, Police Officer Joshua Espana used physical force against § 87(2)(b)**

**Allegation (N) Force: At § 87(2)(b) in the Bronx, Lieutenant Romaine Wilson used physical force against § 87(2)(b)**

**Allegation (O) Force: At § 87(2)(b) in the Bronx, officers used physical force against**

§ 87(2)(b)

§ 87(2)(b) recounted that a large group of officers took him to the ground and then took turns punching and kicking hitting him for approximately five minutes. He specifically recounted that officers punched and kicked him in the face and in the side once he was facedown on the ground. He could not attribute the strikes to any particular officers except for Lt. Wilson, whom he accused of punching him. § 87(2)(b)

§ 87(2)(b) recounted that he “balled up” to protect himself and did not strike any of the officers. As previously noted, § 87(2)(b) testified that he sustained a bloody nose, scratches on his nose, knees, back, and elbows, bruising around his left eye, and claimed that he was diagnosed with facial fractures at the hospital. He did not cooperate with providing the investigation access to his medical records. His arrest photo merely shows scattered red marks on his face (BR 72). As will be noted below, the video footage does show that § 87(2)(b) had a bloody nose after the struggle with officers.

The assorted video footage showed that officers first grabbed § 87(2)(b) near a fence, then continued struggling with him as he moved a few feet away to another fence, and ultimately got him face down on the ground. Apart from PO Espana use of force described below, the footage does not depict numerous officers punching and kicking § 87(2)(b) as he alleged. The footage further indicates that Lt. Wilson was not even directly involved in § 87(2)(b) apprehension and used no physical force against him at all.

PO Amin’s BWC footage (BR 49, 01:12-02:00) provides a clear depiction of the moment when officers got § 87(2)(b) face down on the ground. By 02:00, § 87(2)(b) is face down and numerous officers are holding down different parts of his body. PO Espana kneels to § 87(2)(b) left near his head, pushes down on § 87(2)(b) back with his right hand, and holds the back of § 87(2)(b) neck with his left hand. § 87(2)(b) face is angled such that it is completely flat against the ground. PO Espana then uses his left hand to quickly punch § 87(2)(b) twice in the back of the head. PO Espana’s forearms are identifiable because he had long uniform sleeves which are partially rolled up. PO Amin also had her sleeves rolled in such a manner, and one of her forearms is briefly visible as she was standing beside PO Espana. It is clear that PO Amin was not the officer who punched § 87(2)(b) however, as she wore a watch on her left wrist during the incident while PO Espana’s left wrist was bare.

PO Espana’s BWC footage (BR 13, 00:39) shows him approaching as officers get § 87(2)(b) on the ground, but his BWC became jostled and fell off and thus did not capture footage relevant to this allegation.

PO Espana was interviewed more than 20 months after the incident (BR 57). He denied ever punching § 87(2)(b) in the back of the head. He testified that he did not recall being able to make any physical contact with § 87(2)(b) because the number of officers did not allow him room to touch § 87(2)(b). He effectively only ever ended up leaning against another officer as officers were trying to get control of his § 87(2)(b) hands. PO Espana reviewed PO Amin’s BWC footage and did identify one of his forearms based upon the sleeve, but he was unable to identify the hand seen holding the back of § 87(2)(b) head and punching him twice as his own.

PO Gjonbalaj testified that he did punch § 87(2)(b) once he was on the ground. He recounted that § 87(2)(b) put his arms beneath his body to prevent officers from gaining control of them, and so he punched § 87(2)(b) in the ribs to gain compliance. He could not recall how many times he struck § 87(2)(b) or on which side of his body. He did not see any other officers strike § 87(2)(b).

PO Espana’s testimony notwithstanding, the video footage makes clear that PO Espana punched § 87(2)(b) twice in the back of the head. The footage also shows that § 87(2)(b) allegations that numerous officers punched and kicked him are not accurate.

Patrol Guide Procedure 221-01 (BR 45) states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is



reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive.

The group of officers who grappled with § 87(2)(b) to bring him to the ground § 87(2)(g)

Without clear video footage, the investigation could not determine if § 87(2)(b) held his arms beneath his body in the manner PO Gjonbalaj described. § 87(2)(g)

§ 87(2)(g) The footage makes clear that numerous officers were holding down § 87(2)(b) and rendering him largely immobile as they worked to handcuff him. § 87(2)(g)

**Allegation (P) Force: At § 87(2)(b) in the Bronx, an officer restricted § 87(2)(b) breathing.**

§ 87(2)(b) further testified that once officers had placed him onto his stomach, an officer knelt into his middle or upper-back just to the right of his spine, prompting him to say that he could not breathe. § 87(2)(b) testified that there was dry blood clogging his nose that was preventing him from breathing, but that the officer kneeling into his back also restricted his breathing. § 87(2)(b) estimated that he was having difficulty breathing for 30 to 60 seconds. § 87(2)(b) was only able to describe the officer who knelt into his back as a heavy male. It was unclear how § 87(2)(b) was able to see the officer who knelt on his back.

As noted above, § 87(2)(b) can be heard saying that he cannot breathe in the video footage. He begins saying it before officers have even brought him to the ground. PO Amin's third BWC video provides the best view of § 87(2)(b) as officers restrained him on the ground (BR 49, at approximately 01:11). The video clearly shows multiple officers leaning on him with their hands as he is restrained, but the video does not clearly show which officer, if any, did anything that could have restricted his breathing. None of the footage provides a clear view of any officer kneeling atop § 87(2)(b) back.

PO Dejesus acknowledged that § 87(2)(b) said that he could not breathe and noted that officers sat him up upon hearing that. She did not remember sitting or kneeling on his back and did not see any other officer do so. PO Amin similarly did not know if any officer ever sat or knelt on § 87(2)(b) back and denied that any officer did anything that could have restricted his breathing. PO Gjonbalaj did not ever remember § 87(2)(b) saying he was having trouble breathing. PO Gjonbalaj denied kneeling or sitting on § 87(2)(b) back while § 87(2)(b) was on the ground. He did not see any other officers do so.

**Allegation (Q) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Fatmir Gjonbalaj spoke discourteously to § 87(2)(b)**

PO Amin's third BWC video shows that, after officers handcuffed § 87(2)(b) and he sat up, PO Gjonbalaj yelled at him, "Get up! Get the fuck up!" (BR 49, at approximately 02:20). At that moment, § 87(2)(b) was sitting on the ground in handcuffs and bleeding from his nose.

PO Gjonbalaj testified that he made the profane remark because he had fractured a bone in his hand during the incident, and he had begun to feel the pain of it once his adrenaline rush decreased. LOD paperwork shows that PO Gjonbalaj fractured the tip of one of the fingers on his left hand during the incident (BR 58).

Patrol Guide Procedure 200-02 states that officers are to, "Maintain a higher standard of integrity than is generally expected of others" and that officers are to "render [their] services with courtesy and civility" (BR 46). DCT Case 2017-17005 states that when officers use profanity under the justification of a stressful or chaotic situation, the interaction must be "so chaotic that the duty of courteous and professional behavior should overridden by the need to maintain order" (BR 47).

§ 87(2)(g) By that point, § 87(2)(b) was fully handcuffed and on the ground. § 87(2)(g)

**Allegation (R) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer MICHAEL DELUNA threatened to arrest an individual.**

It is undisputed that PO Deluna threatened to arrest an unidentified man.

PO Deluna's BWC shows PO Deluna briefly push a man in a white shirt toward the entrance of the building after Sgt. Wells orders the officers to clear the area (BR 18, at approximately 00:40). After this, a second man in a black shirt pulls the man in the white shirt away from the officers and toward the building entrance. The man in the black shirt protests that the area is a public space while continuing to walk toward the entrance, and PO Deluna repeatedly yells, "Keep going!" As the man in the black shirt nears the building entrance, PO Deluna says, "Wanna get arrested? You wanna get arrested? Wanna get arrested?" By this point, the man in the black shirt is in the building doorway, while the man in the white shirt has stepped to the side near the entrance. PO Deluna continues to yell, "Keep going!" at him.

PO Deluna confirmed that made the threat of arrest (BR 59). He said that the men were among a group committing disorderly conduct by obstructing the walkway and disobeying an order to move. Upon review of the BWC video, he confirmed that his comment was primarily directed at the man in the white shirt who had stopped moving back and was standing off to the side in a walkway that leads to another building entrance. He testified that the man in the white shirt was still in the way of the lobby and the crowd had not been fully dispersed. He further confirmed that while the men were no longer blocking a vehicular pathway, they were still standing in a pedestrian walkway.

The video footage makes clear that neither man was blocking any pedestrian or vehicular pathway when PO Deluna made the threat. They had complied with PO Deluna's orders and had retreated all the way to the building entrance. § 87(2)(g)

**Allegation (S) Force: At § 87(2)(b) in the Bronx, an officer used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that, as he was bringing his bikes back into the building, an officer grabbed him by his arm and swung him into the door frame of his building, causing pain to his shoulder and collarbone. § 87(2)(b) went to a doctor over a month later and was scheduled for a follow-up, but he never went to his follow-up and never received any treatment.

PO Deluna's BWC shows officers guiding multiple people back into the building, including an individual with a motorcycle identified by the investigation as § 87(2)(b) (BR 18, at approximately

01:59). Officers walk up to him while he is in the door frame and tell him to continue moving, but officers do not use any physical force to get him inside. He briefly says something to the officers before continuing to walk inside with his motorcycle.

§ 87(2)(g)

**Allegation (T) Discourtesy: At the PSA7 stationhouse, Police Officer HENRY ROJAS spoke discourteously to** § 87(2)(b)

PO Gonzalez's second BWC shows an interaction between Police Officer Henry Rojas and § 87(2)(b) at the stationhouse desk (BR 61, at approximately 08:50). § 87(2)(b) is cuffed and restrained by officers, and he makes various complaints about the incident. PO Rojas eventually steps toward him and says, "Yo, you acting mad tough. Shut the fuck up! Shut the fuck up! Shut the fuck up! Shut the fuck up!"

PO Rojas did not remember this incident at all and did not remember making the above-referenced profane remark both before and after being presented with BWC footage (BR 62). He did not know why he made that statement upon being presented with the footage.

Patrol Guide Procedure 200-02 states that officers are to, "Maintain a higher standard of integrity than is generally expected of others" and that officers are to "render [their] services with courtesy and civility" (BR 46).

§ 87(2)(g)

**Allegation (U) Abuse of Authority: At the PSA7 stationhouse, an officer searched** § 87(2)(b) **recording device.**

**Allegation (V) Abuse of Authority: At the PSA7 stationhouse, an officer deleted information on** § 87(2)(b) **electronic device.**

§ 87(2)(b) testified that he had filmed part of the incident with his phone before he dropped it once PO Dejesus used force against him. When he got his phone back, it contained no videos from the incident. § 87(2)(b) concluded that an officer must have deleted the videos, but he did not see any officer do so.

PO Gjonbalaj, PO Amin, PO Dejesus, PO Espana, and PO Rojas all denied that they deleted any videos from § 87(2)(b) phone and had no knowledge of anyone else doing so.

Absent additional evidence, the investigation lacked any ability either to identify the subject officer for these allegations or even to determine if § 87(2)(b) did successfully record footage on his phone during the incident. § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) § 87(2)(b) or § 87(2)(b) have been a party (BR 63).
- PO Fatmir Gjonbalaj has been a member of the NYPD for nine years and has been a subject in one prior CCRB complaint and one allegation, which was not substantiated. PO Gjonbalaj is also currently a subject of two allegations in one other CCRB complaint filed after this one. The investigation into this complaint is ongoing. § 87(2)(g)
- PO Catherine Dejesus has been a member of the NYPD for three years and this is the first CCRB complaint to which she has been a subject.

- PO Joshua Espana has been a member of the NYPD for three years and has been a subject in one prior CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Lt. Romaine Wilson has been a member of the NYPD for 11 years and has been a subject in 11 CCRB complaints and 29 allegations, of which three were substantiated.:
  - 201200857 involved a substantiated stop allegation against Lt. Wilson. The Board recommended Charges, and Lt. Wilson was found not guilty.
  - 201809854 involved substantiated allegations of discourteous word and offensive language (gender) against Lt. Wilson. The Board recommended Formalized Training and the NYPD imposed Instructions.
  - Lt. Wilson is currently a subject in one other CCRB case and five allegations. The investigation into this complaint is ongoing. § 87(2)(g)
- PO Michael Deluna has been a member of the NYPD for seven years and has been a subject in one other CCRB complaint and six other allegations, none of which were substantiated. § 87(2)(g)
- PO Henry Rojas has been a member of the NYPD for three years and has been a subject in three other CCRB complaints and six other allegations, none of which were substantiated. PO Rojas is currently a subject of one allegation in one complaint filed after this one. The investigation into this complaint is ongoing. § 87(2)(g)

#### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) and § 87(2)(b) each filed a Notice of Claim with the City of New York claiming assault, false arrest, false imprisonment, negligent hiring, negligent training, negligent supervision, malicious prosecution, violation of civil rights, emotional distress, loss of freedom, physical and psychological distress, and substantial pain and injury, and seeking \$1,000,000 as redress (BR 64-65). The attorney for both men, § 87(2)(b) has not responded to requests for information about any 50-H hearings held in regards. § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 5

Investigator: <u>Stephen J. DiFiore</u>	Inv. Stephen DiFiore	March 16, 2022
Signature	Print Title & Name	Date

Squad Leader: <u>Daniel Giansante</u>	IM Daniel Giansante	March 16, 2022
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**CCRB Case # 202004031**

Signature

Print Title & Name

Date

Reviewer:

Signature

Print Title & Name

Date